

ROTH & ROTH, LLP

192 LEXINGTON AVENUE, SUITE 802, NEW YORK, NEW YORK 10016
ROTHANDROTHLAW.COM T: (212) 425-1020 F: (212) 532-3801

October 28, 2019

VIA ECF

Hon. Michael A. Telesca
United States District Judge
Kenneth B. Keating Federal Building
100 State Street
Rochester, New York 14614

Re: *Casaccia v. City Of Rochester, et al.*
17-cv-6323 (MAT)(JWF)

Dear Judge Telesca:

I write regarding the City's purported "Response in Support" of the Motion to Bifurcate, filed at Docket No. 56 on October 28, 2019, which is actually a sur-reply.

Plaintiff respectfully submits that the Court should disregard the City Defendants' sur-reply because it is untimely, because Mr. Ash never contacted your undersigned to request Plaintiff's consent to file the sur-reply, and because he did not request the Court's permission to file the untimely sur-reply.

On September 12, 2019, the Court issued the following unnumbered Docket Order resetting deadlines as to the City Defendants' motion to bifurcate:

**"Set/Reset Deadlines as to [47] MOTION to Bifurcate.
Responses due by 9/26/2019. Replies due by 10/3/2019.
Motion will be submitted without oral argument on
10/9/2019 before Hon. Michael A. Telesca. No court
appearances are required. (JMC)"**

Thus, because this motion was fully submitted on October 9, 2019, Mr. Ash's sur-reply is untimely.

The City Defendants' sur-reply papers are also inappropriate because Mr. Ash failed to request your undersigned's consent or the Court's permission to file said sur-

reply. Local Rule 7(a)(6) states, “Sur-Reply. Absent permission of the Judge hearing the motion, sur-reply papers are not permitted.”

Mr. Ash failed to request the Court’s permissions prior to filing the sur-reply, and he also failed to request permission in the papers themselves. *See* Dkt. 56.

Lastly, the Court should disregard the sur-reply because it lacks any evidentiary foundation as Mr. Ash fails to attach the deposition transcript, and instead simply filed a self-serving attorney affirmation.

For these reasons, Plaintiff respectfully submits that the Court should disregard Defendants’ sur-reply papers and should deny their motion to bifurcate.

Respectfully Submitted,

s/Elliot Dolby Shields
Elliot Dolby Shields, Esq.
ROTH & ROTH, LLP
Co-counsel for Plaintiff
192 Lexington Avenue, Suite 802
New York, New York 10016
Ph: (212) 425-1020
eshields@rothandrothlaw.com

cc: Donald Thompson (via email)
Co-counsel for Plaintiff

Spencer Ash (via email)
Attorney for the City defendants

Patrick B. Naylor (via email)
Attorney for the Rural Metro defendants